

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ALBY WU,

Plaintiff,

v.

CITY OF COLUMBUS, OHIO, *et al.*,

Defendants.

Case No. 2:24-cv-03783

Judge Edmund A. Sargus, Jr.

Magistrate Judge Kimberly A. Jolson

**MEMORANDUM IN OPPOSITION TO PLAINTIFF’S MOTION TO STAY
BRIEFING ON THE PENDING MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendants City of Columbus (“the City”) and Zachary B. Rosen (collectively “Defendants”) properly removed this case to federal court because the wording of Plaintiff’s complaint demonstrated that she was suing the City under federal law pursuant to a *Monell* theory. However, in Plaintiff’s Reply in Support of her Motion to Remand, Plaintiff specifically stated, “Wu’s Complaint by its terms does not state a federal cause of action and, in fact, it alleges state law claims for malicious prosecution and negligence—a claim that only exists under state law.” REPLY (ECF No.9 at PageID 75). Plaintiff’s now-clarified position means, based on well-settled law, the City is immune from liability in this case and must be dismissed as a party. Plaintiff does not want to respond to the pending Motion for Judgment on the Pleadings because there is no response that she can offer to save an Ohio state-law tort claim short of arguing that the Court reverse existing, controlling, and well-established law.

The foregoing, combined with Plaintiff’s continued failure to dismiss the City, and her reluctance to present her argument regarding state-law immunity, makes Defendants apprehensive about this issue being simply kicked down the road to be handled in state court. Plaintiff’s only

chance of surviving the pending motion is to argue that she is suing the City under federal law pursuant to a *Monell* theory which would necessarily mean that this Court has jurisdiction over this matter. Thus, this case is distinguishable from the cases cited in Plaintiff's Motion to Stay as none of those cases dealt with this simple binary issue: (1) did Plaintiff bring a viable federal claim against the City?; or (2) did Plaintiff bring a frivolous state-law claim against the City?

For purposes of clarity and efficiency, Defendants request that the remand and dismissal issues be resolved together. Plaintiff's motion should be denied and she should have to respond to the pending Motion for Judgment on the Pleadings.

Respectfully submitted,

/s/ Westley M. Phillips

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CERTIFICATE OF SERVICE

I hereby certify that, on **September 10, 2024**, I electronically filed the foregoing with the Court using the Court's CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court's CM/ECF system.

/s/ Westley M. Phillips
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